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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 RICHARD EVANS,

12 Plaintiff,

13 v.

14 R. MILAN, ET. AL.,

15 Defendants.
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Case No. 1:20-cv-70-AWI-HBK

ORDER DENYING PLAINTIFF'S MOTION
TO DISMISS SCREENING (1915)

(Doc. No. 129)

17 Pending before the Court is Plaintiff's "motion to dismiss screening (1915), granting
18 amended complaint of 8/12/20," filed July 22, 2021. (Doc. No. 129, "Motion"). In summary,
19 Plaintiff requests that the Court not do its § 1915 screening order on his amended complaint, filed
20 August 12, 2020 and to let the case proceed. (*Id.* at 3). Plaintiff's Motion is denied. Screening
21 under § 1915 is required by statute and cannot be waived.

22 A review of the docket confirms that the former Magistrate Judge issued a screening order
23 on Plaintiff's initial complaint. (Doc. No. 15). In response to the screening order, Plaintiff filed a
24 first amended complaint on August 24, 2020. (Doc. No. 34). Thereafter, Plaintiff filed a second
25 amended complaint, which is "lodged," but was not filed by the Clerk. (Doc. No. 42). Plaintiff
26 did not accompany his second amended complaint with a motion for leave to amend. Plaintiff
27 does not reference the second amended complaint in the instant motion. (*See* generally Doc. No.
28 129).

1 Fed. R. Civ. P. 15 permits a plaintiff to file a first amended complaint as a matter of right.
2 Thereafter, any other amended complaints require either the opposing parties' consent, or plaintiff
3 must seek leave from the Court. Because Plaintiff did not seek leave to file the second amended
4 complaint, the Court directs the Clerk to strike Plaintiff's "lodged" second amended complaint to
5 avoid any confusion regarding the operative complaint in this case. The Court will conduct the
6 required § 1915 review of Plaintiff's first amended complaint in due course.

7 Accordingly, it is **ORDERED**:

8 1. Plaintiff's motion to dismiss screening (Doc. No. 129) is DENIED.

9 2. The Clerk of Court shall strike Plaintiff's lodged second amended complaint. (Doc.
10 No. 42). The Court deems Plaintiff's amended complaint (Doc. No. 34) the operative complaint
11 for screening under 28 U.S.C. § 1915A.

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13 Dated: July 23, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE